

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendments to Harmonize and Streamline Part)	WT Docket No. 16-240
20 of the Commission's Rules Concerning)	
Requirements for Licensees to Overcome a)	
CMRS Presumption		

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc.^{1/} (“T-Mobile”) hereby submits these reply comments in the above-referenced proceeding.^{2/} T-Mobile agrees with those commenters who have highlighted the need to avoid unintended consequences by the proposed amendments to Part 20 (and associated technical amendments to other sections),^{3/} and urges the Commission to avoid the accidental reclassification of services provided using Part 15 unlicensed devices through its proposed elimination of Section 20.7(h).

I. Section 20.7(h) is a Substantive Rule That Purposefully Excludes Part 15 Unlicensed Services from the Definitions of Mobile Services and CMRS

The *NPRM* sought comment on whether the deletion of Section 20.7 would change the definition of “mobile service.”^{4/} Eliminating Section 20.7(h) would rescind the substantive classification of services provided with Part 15 devices which, under that rule, are not mobile

^{1/} T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

^{2/} *Amendments to Harmonize and Streamline Part 20 of the Commission's Rules Concerning Requirements for Licensees To Overcome a CMRS Presumption*, Notice of Proposed Rulemaking, WT Docket No. 16-240, FCC 16-95 (rel. July 28, 2016) (“*NPRM*”).

^{3/} Comments of CTIA, WT Docket No. 16-240, at 4-5 (submitted Oct. 17, 2016) (“CTIA Comments”); Comments of Motorola Solutions, Inc., WT Docket No. 16-240, at 2 (submitted Oct. 17, 2016) (“Motorola Comments”).

^{4/} *NPRM* at ¶ 21.

services. The proposed deletion could therefore have a substantive effect by creating regulatory rights and obligations for providers of services using Part 15 devices based on their potential reclassification as providers of a “mobile service.”

The Commission adopted the relevant portions of Part 20 in order to clearly define commercial mobile radio service (“CMRS”), to draw bright lines between CMRS and other services such as private mobile service, and to classify the various Commission-authorized services falling under those definitions for purposes of regulatory treatment.^{5/} Section 20.3 was adopted only to create a set of broad definitions that generally tracked Section 332 of the Communications Act, including the phrases “mobile service,” “commercial mobile radio service,” and “private mobile radio service.”^{6/} The Commission did not, however, design these general definitions to categorize the various Commission-authorized services that would fall within the scope of each term. Instead, it adopted separate rule sections (§§ 20.7 and 20.9) to specify which Commission-authorized services would and would not be included as “mobile services” and CMRS.

The Commission determined that services offered under Parts 22, 24, 25, 80, 87, 90, and 95 would be considered “mobile services.”^{7/} It also considered whether certain unlicensed services, including those provided using Part 15 devices and unlicensed PCS, should be included within the definition of “mobile services” as set forth in Section 20.3. Based on the comments received, it determined that those services should not be considered “mobile services.”^{8/}

^{5/} *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1413 ¶ 2 (1994) (“*Mobile Services Second R&O*”).

^{6/} *Id.* at Appendix A.

^{7/} *Id.* at 1424 ¶ 35.

^{8/} *Id.* at ¶ 37 (“Accordingly, unlicensed PCS and Part 15 devices will not be included under the definition of mobile services.”).

Consequently, current Section 20.7(h) defines “mobile services” as including certain unlicensed services otherwise within the scope of Section 20.3 “but excluding unlicensed radio frequency devices under Part 15 of this chapter (including unlicensed personal communications service devices).”^{9/}

In promulgating Section 20.7(h), the Commission made the substantive decision to exclude services using Part 15 unlicensed devices from the class of Commission-authorized “mobile services.” Deletion of Section 20.7(h) would therefore constitute a substantive amendment to Part 20 by rescinding that classification.

II. The Commission’s Stated Intent to Avoid Making a Substantive Rule Change Requires that it Preserve the Language of Section 20.7(h)

In the *NPRM*, the Commission appropriately declares that “we do not intend to change...any substantive CMRS regulatory policies with our proposal...There would be no change in the obligations imposed upon entities providing commercial or private mobile radio service.”^{10/} Because it has no intent to make any substantive changes to the rules, and because it does not purport to re-classify any existing services, the *NPRM* does not analyze whether rescinding the rule that classifies services offered with Part 15 devices as a mobile service is in the public interest.

Therefore, the potential re-classification of services offered with Part 15 devices that the *NPRM* proposes appears to be an unintended consequence of the proposed amendments to Part 20. With this awareness, the Commission should make a modest change to its proposal by either preserving existing Section 20.7(h), or by incorporating the wording of Section 20.7(h) into

^{9/} 47 C.F.R. § 20.7(h).

^{10/} *NPRM* at ¶ 23.

Section 20.3 along with the other conforming amendments that the *NPRM* proposes.^{11/} Either of these steps would prevent the unintended consequence of a potential re-classification of services using Part 15 devices, and thereby achieve the goal of the *NPRM* to avoid making any substantive change to the rights or obligations of regulated entities.

III. Conclusion

In order to avoid the unintended consequence of potentially re-classifying services provided with Part 15 devices, the Commission should retain the wording of Section 20.7(h).

Dated: November 16, 2016

Respectfully submitted,

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^{11/} See *NPRM* at ¶¶ 19-20 (discussing conforming amendments to Sections 4.3(f) and 9.3).